



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Alfa-Laval Separation, Inc.

**File:** B-250065

**Date:** January 4, 1993

Victor G. Klingelhofer, Esq., Cohen & White, for the protester.

Ronald M. Pettit, Esq., Defense Logistics Agency, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Contracting agency properly employed "Products Offered" clause in solicitation where purchase description was necessarily limited to one manufacturer's part number because the item being procured was an item for which the government did not possess technical data.

2. Protest that solicitation's purchase description failed to contain sufficient information to allow protester to prepare an alternate proposal under the agency's "Products Offered" clause is dismissed as untimely when filed after the closing date for receipt of initial proposals.

### DECISION

Alfa-Laval Separation, Inc. protests the terms of request for proposals (RFP) No. DLA750-92-R-0836, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), for industrial fluid coolers. The protester contends that the RFP is unduly restrictive and will result in an "illegal sole-source award."

We deny the protest in part and dismiss it in part.

The RFP was issued on July 28, 1992, for six industrial fluid coolers identified by National Stock Number (NSN) 4420-01-252-4805 and described by "ITT" (the original manufacturer) code and part number 5-036-06-054-005.<sup>1</sup> The

<sup>1</sup>The requirement was synopsisized in the Commerce Business Daily on July 8; the synopsis stated that data was not available to the government but invited all responsible sources to submit offers.

RFP includes DLA's standard "Products Offered" clause that permits firms to offer alternate products that are identical to or interchangeable with the named product. Alfa-Laval filed this protest on August 26, 1 day prior to the date set for receipt of proposals.

In its initial protest, Alfa-Laval alleged that the RFP was unduly restrictive of competition and constituted a "de facto sole-source" because only one firm has the necessary information to furnish the product. The protester argues that the agency failed to follow the "procedures prescribed for contracting [on the basis of other than] full and open competition." We find no merit to this protest ground.

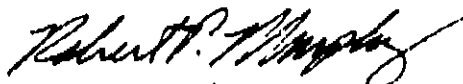
First, as stated above, the RFP contained the DLA's standard "Products Offered" clause which permitted the submission of alternate products that were physically, mechanically, and functionally interchangeable with the item listed in the RFP's purchase description. Thus, for example, firms which may have reverse engineered the listed product or which have otherwise gained access to its drawings and specifications could have submitted proposals. Second, apparently because the agency has historically known of only one source for this item (see Federal Acquisition Regulation § 6.302-1), the agency prepared a justification and approval (J&A) for other than full and open competition on June 23, citing 10 U.S.C. § 2304(c)(1) (1988) as authority, because the item was an item for which the government did not possess complete technical data. See Hydra Rig Cryogenics, Inc., B-234029, May 11, 1989, 89-1 CPD ¶ 442. In response to the protest, the agency again conducted a search of government drawing repositories and confirmed that the government does not possess the technical data or drawings necessary to procure the items competitively. It also contacted ITT and asked the firm whether it would provide the agency with current drawings; ITT declined to do so. We find no violation of applicable procedures by the agency.

In its comments on the agency report, the protester for the first time argues that the agency is here soliciting for a "shell and tube" heat exchanger which is outdated and unreliable and that the RFP should have contained additional information on the items since the protester can offer a more advanced "plate heat exchanger" that can meet the requirements. According to the protester, if the agency had included "sufficient information, Alfa-Laval [could have] identif[ied] which of its many heat exchangers it would have proposed here."

The protester's contention is essentially that the RFP was defective because it did not provide sufficient information for the firm to prepare an alternate proposal. Our Bid

Protest Regulations provide that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1992). Alfa-Laval knew or should have known upon its receipt of the solicitation that the RFP's purchase description (with only a simple part number listed) failed to contain sufficient information to identify which of its heat exchangers it could propose. However, Alfa-Laval failed to raise this issue in its initial protest, which instead addressed the agency's alleged failure to follow procedures for procuring the item on the basis of other than full and open competition. Since the limited (and allegedly inadequate) purchase description in the RFP was apparent on the face of the solicitation, we dismiss this protest ground as untimely.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel